

Criminal Revision No. 57/2001
(Old No. 582/1987)

Bagicha Singh and others Revisionists.

Vs.

State Respondent.

Hon'ble Irshad Hussain, J.

None appear for the revisionists Surjeet Singh and Beint Singh whereas the revision as against Bagicha Singh was dismissed in limine at the admission stage.

The three accused including these two revisionists were sent up to stand trial for offences under sections 60/63 of the Excise Act. There was allegation that they were engaged along – with Bagicha Singh in manufacturing illicit liquor. On information a raid was arranged by the police party which consisted of six police personnel. They were able to arrest Bagicha Singh only from the scene of the occurrence and these two revisionists were alleged to have fled away from there. At the trial the members of the police party namely S.I. R.S.Pandey (P.W.1), constable Vijay Kumar (P.w.2) among others were examined and they narrated the prosecution story. The learned Magistrate found their evidence reliable and convicted all the three named above under section 60(2) of the Excise Act. On an appeal being preferred the same was dismissed on 9-3-19987 by the IInd Additional Sessions Judge Nainital. Aggrieved by the rejection of the appeal the instant revision was filed by all the accused as stated above and revision of Bagicha Singh was dismissed in limine.

Both the above revisionists have disputed their presence at the scene of the occurrence and they also claimed that they were not known to the members of the police party and no identification parade was arranged to fix their identity as the culprits of the case. The plea was not accepted on the ground that the witnesses knew them from before the occurrence. The

learned Magistrate however failed to take into consideration the glaring fact that in the memo of recovery it was not mentioned that the culprit who have fled away were known to the members of the police party. The learned Sessions Judge also did not attach any importance to this factor and in my view this is a basic infirmity in the assessment of the evidence of the prosecution. If both these revisionists were known to the members of the policy party this fact was bound to be recited in the memo of the recovery which was the basic document and was prepared at the first available opportunity to incorporate the facts of the occurrence. Subsequently when the revisionists were arrested nothing incriminating was recovered from their possession and in the totality of the circumstances of the case there being said infirmity, they were deserved to be given benefit of doubt.

For the above reasons there is substance in this revision and the same is hereby allowed. The judgment and order of the trial court as well as the appellate court in relation to their conviction and sentence are set aside and they are acquitted of the charge.

(Irshad Hussain, J.)

Dated: 12-9-2003

ISB